IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 444 of 2001
(Old No. 2534 of 1982)

Yunus, S/o Shri Kallu
R/o P.S. Kotwali, Dehradun
District Dehradun. ….. Appellants

Versus

State of Uttar Pradesh …….. Respondent.

Shri Rajesh Joshi, Amicus Curiae for the appellant.
Shri P.S. Sone and Shri G.S. Sandhu, learned A.G.A. for the state.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 374(2) of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr.P.C.) is directed against the judgment and order dated 7/9.08.82, passed in Sessions Trial No. 62 of 1980, by learned Additional Sessions Judge, Dehradun, whereby appellant Yunus S/o Kallu, has been convicted under Section 394 of Indian Penal Code, 1860 (for brevity herein after referred as I.P.C.) and sentenced to rigorous imprisonment for a period of three years.

2. Heard learned counsel for the parties and perused the record.

3. Prosecution story in brief is that P.W. 3 Dhan Prakash, who was an employee of M/s Har Swaroop & Sons, Muzaffarnagar, used to come to Dehradun to collect price money of KHOYA (a milk product), supplied by said firm. On 23.10.1978, at about 6:00 P.M. after collecting an amount of Rs. 12,000/- from the dealers

Dhan Prakash was on his way back from Dehradun. When he reached at the bus stand, he was suddenly overpowered and beaten by three miscreants. He shouted for help. On hearing the shouts, P.W. 1 Head Constable Abdul Hafiz, P.W. 4 Constable Dharamveer Singh and Constable Kanihaya Singh, who were on patrol duty, reached at the spot. They saw the incident. Miscreants snatched moneybag from Dhan Prakash and started running away. Police party chased and could apprehend Yunus, S/o Zakaria. The rest could not be apprehended, as they succeeded in escaping from the scene but they were recognized by the policemen as Yunus, S/o Kallu (appellant) and one Mahendra Singh. P.W. 3 Dhan Prakash, lodged First Information Report (Ext. A-2) at 6:20 P.M. with the police station. He was sent to hospital, as he was in an injured condition. P.W. 2 Dr. P.D. Jakhmola, examined injuries on the person of Dhan Prakash and recorded injuries in his report (Ext. A-4). After completion of the investigation, the police submitted the charge sheets (Ext. A-9 to A-11), against the accused persons Yunus, S/o Jakaria, Yunus, S/o Kallu and Mahendra Singh, for their trial relating to offence, allegedly committed by them punishable under Section 394 read with Section 397 I.P.C., P.S. Kotwali, Dehradun.

4. The Magistrate, on receipt of the charge sheets, it appears, after giving necessary copies to the accused person, as required under Section 207 of Cr.P.C., committed the case to the Court of Sessions, for trial. The trail court after hearing the prosecution and the defence, framed charge of offence punishable under Sections 394

read with Section 397 I.P.C. against all the three accused, who pleaded not guilty and claimed to be tried. Later it appears that accused Mahendra Singh was absconded and his case was separated. In view of the fact that the accused did not plead guilty, the prosecution got examined P.W. 1 Head Constable Abdul Hafiz (eyewitness), P.W. 2 Dr. P.D. Jakhmola (who examined the injuries on the person of Dhan Prakahs), P.W. 3 Dhan Prakash (injured eye witness), P.W. 4 Dharamveer Singh and P.W. 5 S.I. Mahendra Singh (Investigation Officer). The oral and documentary evidence was put to the accused including appellant Yunus S/o Kallu under Section 313 of Cr.P.C. In reply to the queries from the court, the accused/appellant, alleged that he has been falsely implicated due to enmity. The trial court after hearing the parties found accused/appellant Yunus S/o Kallu, guilty of offence punishable under Sections 394 I.P.C. (However, another accused Yunus S/o Jakaria was acquitted of the charge). The accused Yunus S/o Kallu was heard on sentence and was sentenced to rigorous imprisonment for a period of three years under Section 394 I.P.C. Aggrieved by said judgment and order dated 7/9-08-82, this appeal was filed before the Allahabad High Court in the year 1982, from where it has been received by transfer under Section 35 of U.P. Reorganisation Act, 2000, for its disposal.

5. Before further discussions, it is pertinent to mention here the injuries found on the person of Dhan Prakash (the person looted), recorded by P.W. 2 Dr. P.D. Jakhmola, who recorded the same in Ext. A-4, as under:-

1. **Incised wound on the front of the forehead 5.5cm X 0.5 cm X bone deep.**
2. **Lacerated wound 1.5cm X 1cm, muscle deep at the middle of the outer side of right forearm.**
3. **Traumatic swelling on the back of right forearm in the middle in an area of 11cm X 10 cm with suspected fracture.**
4. **Incised wound 1.5cm X 0.25cm X muscle deep on the back of the right hand 6cm below the wrist joint.**
5. **Incised wound 2.5cm X 1.5cm X bone deep on outer side of the right forefinger at the junction of first and second phalanx.**
6. **Incised wound on the left middle finger at the tip on its outer side 1.5xm X 0.5 X bone deep cutting a part of the nail.**
7. **Abrasion on the middle of right thigh 8cm X 1cm.**

6. P.W. 3 Dhan Prakash, narrating the prosecution story, has stated that he is Muneem (Clerk) of a firm of Muzaffarnagar. He used to collect KHOYA (a milk product), supplied by said firm to the dealers in Dehradun. On the date of incident, the witness states that after collecting Rs. 12,000/- at about 6:00 P.M., he reached bus

stand. Suddenly, 3-4 persons, surrounded him and gave him blows. The witness further states that him moneybag was snatched. P.W. 3 Dhan Prakash, further states that policeman took him to the hospital.

7. The above statement of the victim is corroborated by P.W. 1 Head constable Abdul Hafiz, who states that on 23.10.1978, at about 6:00 P.M. he heard shouts for help at the bus stand and rushed along with Constable Kanihaya Singh and Constable Dharamveer Singh (who were on patrol duty with him) to the spot. The witness corroborates that he saw miscreants including Yunus, S/o Kallu, causing injuries on the person of Dhan Prakash and they snatched the moneybag. This policeman (P.W. 1) further states that he long with his colleagues, chased the accused but could apprehend only Yunus, S/o Jakaria. The witness further clarifies that he knew the other accused person from before, as they were earlier arrested in connection with some other crime. P.W. 1 Abdul Hafiz, has stated that he and his colleagues were having torches with them and they could see the accused, committing the crime at the bus stand.

8. P.W. 4 Constable Dharamveer Singh, is also eye witness and he has also corroborated the statement of P.W. 1 head Constable Abdul Hafiz and P.W. 3 Dhan Prakash. The oral evidence adduced by these witnesses read with the injury reports, as quoted above, makes this Court believe that the prosecution has been successful in proving the charge of offence punishable under Section 394 I.P.C. against accused/appellant Yunus S/o Kallu.

9. Learned Amicus Curiae on behalf of the appellant, argued that P.W. Dhan Prakash, who is a star witness, has not recognized any of the robbers even in the court. Had it been a case of identification, the argument could have waived with the court. But since the other eye witnesses, recognized miscreants including the present appellant, who were known to them and since the robbers were named in the first Infromation Report, as such, the shortcoming pointed out by learned Amicus Curiae, cannot be said to be fatal in this case.

10. It is also argued on behalf of the accused/appellant Yunus, S/o Kallu that accused had enmity with P.W. 1 Abdul Hafiz, as such, the statement could not have been relied by the trail court. Explaining the enmity, it is submitted by the learned Amicus Curiae that the appellant had made administrative complaints against P.W. 1 Abdul Hafiz to the higher authorities of the police, as such he was inimical to the appellants. From the record it appears that no evidence in defence is given to corroborate this submission. The suggestion given to Abdul Hafiz (P.W. 1) is denied by said witness. In the circumstances, it cannot be said that Abdul Hafiz would have falsely implicated the appellant, particularly in such a case where as many as seven injuries were found on the person of victim.

11. For the reasons, as discussed above, this Court is in agreement with the conviction and sentence, awarded by the trail court against the accused/appellant./ Therefore,

the appeal is liable to be dismissed. The same is dismissed. If still any part of sentence awarded is unserved, the appellant shall be taken into custody by the court concerned.

Dt. 28.10.2006 **(Prafulla C. Pant, J.)**
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